



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2012

Mr. David K. Walker
Montgomery County Attorney
207 West Phillips, Suite 100
Conroe, Texas 77301]

OR2012-17021

Dear Mr. Walker:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 468804 (ORR# 2012-5354).

The Montgomery County Sheriff's Office (the "sheriff" office") received a request for the offense report pertaining to a specified incident. You state you will release basic information as indicated in Exhibit D.¹ See Gov't Code § 552.108(c). You claim some of the remaining submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent

¹Basic information refers to the information held to be public in *Houston Chronicle*. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*).

with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law[.]

Fam. Code § 261.201(a), (k), (l)(1)-(2). Upon review, we find Exhibits B and D were used or developed in an investigation of alleged or suspected child abuse. *See id.* §§ 101.003(a) (defining “child” as person under eighteen years of age who is not and has not been married and who has not had disabilities of minority removed for general purposes), 261.001(1) (defining “abuse” for purposes of Family Code chapter 261). Thus, we find this information is within the scope of section 261.201(a). We note, however, the requestor is a parent of the

alleged child victim at issue and is not alleged to have committed the alleged or suspected child abuse. Thus, the sheriff's office may not withhold the information at issue from the requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, before the sheriff's office provides any of this information to the requestor, the sheriff's office must redact any personally identifying information about any other child witnesses. *See id.* § 261.201(l)(1). Accordingly, the sheriff's office must withhold the identifying information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. In addition, the sheriff's office must redact any information that is otherwise excepted from required disclosure under the Act. *See id.* § 261.201(l)(2). As you raise sections 552.108, 552.130, and 552.147 of the Government Code, we will consider their applicability to the information at issue.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us, and have submitted an affidavit from the Montgomery County District Attorney’s Office confirming, Exhibits B and D relate to a pending criminal prosecution. Based on these representations and our review, we conclude the release of Exhibit B and the information you have marked in Exhibit D under section 552.108 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the sheriff's office may withhold this information under section 552.108(a)(1) of the Government Code.

You raise sections 552.130 and 552.147 of the Government Code for portions of the remaining information in Exhibit D. Section 552.130(a)(1) of the Government Code provides that information relating to a motor vehicle operator’s or driver’s license or permit issued by any agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130(a)(1). Accordingly, the sheriff's office must withhold the driver’s license information you have marked in Exhibit D under section 552.130(a)(1) of the Government Code.

Section 552.147(a) of the Government Code provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). Thus, the sheriff's office may withhold the social security number you have marked in Exhibit D under section 552.147(a) of the Government Code.

In summary, the sheriff's office must withhold the identifying information we have marked in Exhibit D under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. The sheriff's office may withhold Exhibit B and the information you have marked in Exhibit D under section 552.108(a)(1) of the

Government Code. The sheriff's office must withhold the driver's license information you have marked in Exhibit D under section 552.130(a)(1) of the Government Code. The sheriff's office may withhold the social security number you have marked in Exhibit D under section 552.147(a) of the Government Code. The sheriff's office must release the remaining information in Exhibit D.²

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 468804

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a special right of access to the information being released. *See* Fam. Code § 261.201(k); Gov't Code § 552.023(a) ("a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person for whom she is authorized representative). Because such information is confidential with respect to the general public, if the sheriff's office receives another request for this information from a different requestor, the sheriff's office must again seek a ruling from this office.